

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT  
DISTRICT OF MASS.

STEVEN H. MALLEN, and  
WILLIAM J. MALLEN  
Plaintiffs,

CIVIL ACTION # 05 CV 10243 RGS

v.

CITY OF BOSTON, and THE  
BOSTON PUBLIC SCHOOLS  
COMMITTEE,  
Defendants.

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

**INTRODUCTION**

The Plaintiffs, Steven H. Mallen and William J. Mallen ("the Plaintiffs") respectfully submit this Opposition to the Defendants' Motion to Dismiss. The Plaintiffs assert that, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("FRCP"), and the Massachusetts Rules of Civil Procedure ("MRCP"), this Honorable Court should deny the motion filed by the Defendants and allow the Opposition.

**ARGUMENT**

**I. THE STANDARD FOR DISMISSAL UNDER 12(b)(6)**

Pursuant to Rule 12(b)(6) of the FRCP, the Plaintiffs request that this Court strike the Defendants' Motion to Dismiss. Rule 12(b)(6) provides that a party has a right to the dismissal of causes of action if the complaining party "fail[s] to state a claim upon which relief can be granted." MRCP 12(b)(6). Motions to dismiss are permissible where a party has failed to provide anything more than bald assertions that a cause of action exists. See Generally, Wright & Miller, Federal Practice & Procedure, §§ 1356-1357 (1992) ("Wright & Miller").

Under the FRCP and the MRCP, the court is to provide for liberal construction of pleadings. For example, Rule 8(a) states that a pleading must set forth a “claim for relief ... [and] shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief...” MRCP 8(a)(1). The Rules do not require the courts to give legal effect by allowing a party to simply make “bald statement[s]” with “conclusory allegations.” Wright & Miller, supra, § 1357.

The Plaintiffs note that this Court should carefully scrutinize pleadings and generally should not dismiss claims for minor or insignificant infractions of the pleading requirements. Currie v. Cayman Resources Corp., 595 F. Supp. 1364, 1370 (N.D. Ga. 1984), aff’d in part and rev’d in part, 835 F.2d 780 (11th Cir. 1988) (In considering a motion to dismiss under 12(b)(6), “the allegations of the complaint and all reasonable inferences from the facts alleged must be taken as true”). The standard for deciding motions to dismiss under FRCP and MRCP 12(b)(6) is well-established: “[A pleading] should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Bracewell v. Nicholson Air. Serv., Inc., 680 F.2d 103, 104 (11th Cir. 1982); see also Quality Foods v. Latin Amer. Agribusiness Dev., 711 F.2d 989, 995 (11th Cir. 1983). This comports with the fundamental purpose of pleadings to provide adequate notice to the parties of each side’s claims and to allow cases to be decided on the merits after an adequate development of the facts. Mayer v. Mylod, 988 F.2d 635, 638 (6th Cir. 1993).

As a result, a pleading is typically liberally construed in favor of the complaining party. See, e.g., Schuler v. United States, 617 F.2d 605, 608 (D.C. Cir. 1979). Additionally, a complaining party is usually granted the benefit of the necessary inferences which can be derived from all of the facts and from the pleadings. Id.; see also Pearman v. Norfolk & Western Railway Co., 939 F.2d

521, 523 (7th Cir. 1991); St. Joseph's Hospital v. Hospital Corp. of America, 795 F.2d 948 (11th Cir. 1986). If an allegation is capable of multiple inferences, the courts usually will construe such allegation in a light most favorable to the pleading party. Mayer v. Mylod, *supra*, 988 F.2d 638.

The court, however, is not required to accept unwarranted factual inferences as true. Morgan v. Church's Fried Chicken, 829 F.2d 10, 12 (6th Cir. 1987). The fact that an allegation is made in a pleading does not grant it extended inferences or a higher standard of consideration than that which would typically be applied to motions to dismiss. *Id.*; Sinay v. Lamson & Sessions Co., 948 F.2d 1037, 1039 (6th Cir. 1991); Shapiro v. Merrill Lynch & Co., 634 F. Supp. 587, 595 (S.D. Ohio 1986).

The Plaintiffs' allegations in their claims meet the minimal requirement of notice pleadings as provided in the FRCP and MRCP. *See, e.g., Garrity v. Garrity* 399 Mass. 367 (1987); Independence Park, Inc. v. Barnstable Bd. of Health, 403 Mass. 477 (1988). In filing their action, the Plaintiffs clearly identify and articulate each act which support the claims they have pled. As a result, if the pleadings are taken as "true" and the Plaintiffs are granted all reasonable inferences, this Court must maintain all counts in the Plaintiffs' Complaint.

The Plaintiffs have clearly pled their claim with specific explicit instances that support their claim that the Defendants had violated the Federal law or the Massachusetts law.

In the instant action, the Plaintiffs have alleged information, which if accepted as true, has demonstrated a significant basis to maintain their claims. Charland v. Muzi Motors, Inc., 417 Mass. 590 (1994).

The crux of the issue, which is specifically the point raised by the Defendants in their Motion to Dismiss, is that such action and wilful conduct arose in the course of the employment relationship

but served no legitimate business purpose. Doe v. Purity Supreme, Inc., 422 Mass. 563, 566 (1966); compare, Green v. Wyman- Gordon Co., 422 Mass. 551, 558-61 (1996); Foley v. Polaroid Corp., 400 ass. 82, 93 (1987). The actions of the Defendants by such scurrilous statements and actions impute serious and wilful misconduct in the work environment.

Employees in Massachusetts are not barred from bringing actions against fellow employees who commit intentional torts which were in no way within the scope of employment furthering the interests of the employer. O'Connell v. Chasdi, 400 Mass. 686, 690 (1987).

**II. THE MALLENS HAVE STATED VALID CLAIMS UNDER MASS. GEN. LAWS c. 149, § 185 AND 5 U.S.C.A. § 2302(B)(8) UPON WHICH RELIEF CAN BE GRANTED.**

A. The Mallens' Claims Under Mass. Gen. Laws c. 149, § 185 Are Not Barred Because the Mallens Provided Written Notice to the Boston Public Schools.

Although M.G.L. c. 149, § 185(c)(1) requires an employee to provide "written notice" to his employer and to afford "the employer a reasonable opportunity to correct the activity, policy or practice" before reporting the activity to a "public body" the statute waives the written notice requirement if the employee:

(A) is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer and the situation is emergency in nature; (B) reasonably fears physical harm as a result of the disclosure provided; or (C) makes the disclosure to a public body as defined in clause (B) or (D) of the definition for "public body" in subsection (a) for the purpose of providing evidence of what the employee reasonably believes to be a crime.

Even if none of the above exceptions apply, the Mallens provided written notice to the Boston Public Schools ("BPS") of the BPS's failure to comply with local fire safety regulations by providing list(s) of defects, ("punch lists") their immediate superior, the chief engineer for the City

of Boston and the design engineer(s) of each fire safety system for each public school that the Plaintiffs' were required to test in the City of Boston. Additionally, the Plaintiffs would refuse to "sign off" on paperwork intended to certify that certain BPS fire safety systems complied with local fire codes. Since the compliance forms were written forms, the Mallens' refusal to sign caused the written documents to be sent to their supervisor, the chief engineer, the design engineer(s) and the Boston Fire Department, thereby notifying the Mallens' supervisors, in writing, that the school fire systems in question failed to conform either to its intended design or the appropriate fire code. Thus, the Mallens' refusal to sign the compliance forms not only provided the BPS with written notice of non-compliance but also provided the BPS with ample opportunity to correct the situation.

If the Mallens' consistent submission of unsigned compliance forms is insufficient to constitute written notice that there was a problem, then the Mallens did provide prior written notice by punch list of fire system problems, and later by grievance to the entire Boston Public School Department through the employee union. In situations involving disputes between BPS employees and their supervisors or the BPS itself, procedure generally requires that the aggrieved union employee file a complaint with the union. The union then submits that complaint, on behalf of the aggrieved employee, to the BPS. The Mallens did file a complaint with the union and the union submitted that complaint by grievance to the BPS. Because the union submitted the Mallens' grievances in writing to the BPS, the Mallens satisfied the requirement that they provide the BPS with written notice of their belief that they were wrongly discharged from their employment with the BPS.

Counsel for the defendants may argue that the Mallens still provided written notice to a

“public body” since the Mallens first notified the union of their grievance rather than the BPS.

However, this argument is incorrect since M.G.L. c. 149, § 185(a)(3) defines “public body” as:

(A) the United States Congress, any state legislature, including the general court, or any popularly elected local government body, or any member or employee thereof; (B) any federal, state or local judiciary, or any member or employee thereof, or any grand or petit jury; (C) any federal, state or local regulatory, administrative or public agency or authority, or instrumentality thereof; (D) any federal, state or local law enforcement agency, prosecutorial office, or police or peace officer; or (E) any division, board, bureau, office, committee or commission of any of the public bodies described in the above paragraphs of this subsection.

A labor union fits none of the possible definitions promulgated under M.G.L. c. 149, § 185(a)(3) since a labor union is not a government body, judiciary, a regulatory agency, a law enforcement agency, or even related to any of these definitions. Thus, the Mallens provided written notice to the BPS first through an agent and not to a “public body.”

Counsel for the defendants might also argue that the Mallens did not satisfy the written notice requirement since the Mallens provided notice indirectly through the union rather than directly writing and submitting a letter to the BPS. Again, this argument would be misplaced. M.G.L. c. 149, § 185(c)(1) merely requires that the employee provide written notice prior to reporting the violation to a public body and does not require that the Plaintiff himself write the notice. The court in Dirrane stated that “the statute is unqualified in its requirement [of written notice] and in this instance a hard and fast rule does serve a rational purpose, namely, by avoiding uncertainties about what might have happened if formal notice had been given.” Dirrane v. Brookline Police Dept., 315 F.3d 65, 73 (2002). Since the Dirrane decision the court in Bennett has clarified that “[f]airly read, the notice requirement is a procedural accouterment--no more, no less . . . [i]t sets up a hoop through which a whistle blower plaintiff must jump on his or her way to relief.” Bennett v. City of Holyoke, 362 F.3d. 1, 8 (2004). Therefore, as a procedural requirement

the Court should construe the notice requirement as broadly as possible and consider any written notice, whether submitted directly by the Mallens or indirectly through the union, as satisfying the written notice requirement in M.G.L. c. 149, § 185(c)(1).

B. The Mallens' Claims Under 5 U.S.C.A. § 2302(B)(8) Are Not Barred Because the Mallens Made a Protected Disclosure Which They Reported to a Higher Authority at the BPS Who Was In a Position to Correct the Wrongdoing.

Dismissal of the Mallens' complaint under 5 U.S.C. § 2302(b)(8) would be improper since the Mallens made a protected disclosure to an authority higher than the Mallens' supervisors and the BPS still failed to take a personnel action as defined by 5 U.S.C.A. § 2302(a). Hooven-Lewis v. Caldera, 249 F.3d 259, 276 (4<sup>th</sup> Cir. 2001). A protected disclosure under 5 U.S.C.A. § 2302(B)(8) includes:

- (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences--
  - (i) a violation of any law, rule, or regulation, or
  - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

The Mallens satisfy the above test because their refusal to approve faulty fire systems throughout the Boston Public School System was due to their reasonable belief that to do so would be in violation of fire codes as well as a "substantial and specific danger to public health or safety," specifically the safety of the numerous children who attend schools within the Boston Public School System.

The Mallens also satisfy the above test because they disclosed the wrongdoing to a higher authority than their supervisors. As the court in Hooven-Lewis stated, a person asserting a claim under 5 U.S.C.A. § 23 must show that the disclosure in question indicates an intent to raise the issue

with a “higher authority who is in a position to correct the alleged wrongdoing.” Hooven-Lewis v. Caldera, 249 F.3d at 276. In Hooven-Lewis the court stated that the plaintiff’s complaints to her immediate supervisor about the supervisor’s “own wrongdoing did not evidence an intent to disclose [the supervisor’s] wrongdoing to an authority higher than [the supervisor].” Id. The court further stated that “[c]riticism directed at the wrongdoer herself is not whistle blowing.” Id. Thus, an employee cannot merely complain of the danger to public health or safety to his immediate supervisor, but must bring the matter to the attention of some higher authority within the company.

Similarly, in the Willis case the plaintiff again failed to complain of the wrongdoing to anyone other than his direct supervisors. Willis v. Department of Agriculture, 141 F.3d 1139, (Fed. Cir. 1998). The court in Willis ruled that “[i]n complaining to his supervisors, [the plaintiff] has done no more than voice his dissatisfaction with his superiors’ decision . . . He has taken no action to bring an issue to the attention of authorities in a position to correct fraudulent or illegal activity.” Id. Again, the court in Willis reasoned that a protected disclosure requires that the employee report the activity in question to a person in a higher position than that of his immediate supervisors. Id.

In the case at bar, the Mallens reported the lack of fire system compliance not just to their immediate supervisors but also to higher authorities, including the Chief Engineers, and the Design Engineer(s) within the BPS who “could remedy the wrongdoing.” Because the Mallens disclosed information that either constituted a violation of law or a threat to public safety and disclosed the information to their supervisors as well as higher authorities within the BPS, the Court should not dismiss their claims under 5 U.S.C.A. § 2302(B)(8).



**III. THE MALLENS' CLAIMS FOR PERSONAL INJURIES SHOULD NOT BE DISMISSED BECAUSE THE MALLENS' INJURIES DO NOT FIT THE DEFINITION OF PERSONAL INJURY UNDER MASS.GEN. LAWS c. 152, § 1.**

While it is correct that an employee's common law actions are barred by the exclusivity of the Massachusetts Worker's Compensation Act ("MWCA") if the employee's condition is a "personal injury" within the meaning of the MWCA, the Mallens' injury does not fit the MWCA definition and is therefore not barred by the MWCA. The MWCA provides "[n]o mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of emotional harm shall be deemed to be a personal injury within the meaning of this chapter." Mass. Gen. Laws c. 152, § 1 (2005). If the Mallens' injury does not fit the MWCA definition of personal injury then they are not barred from recovery by the MWCA. See Green v. Wyman-Gordon Co., 422 Mass. 551, 558, 664 N.E.2d 808 (1996).

Discharge in retaliation for a refusal to approve faulty fire systems throughout the Boston Public School System is not only manifestly against public policy but it is also not "a bona fide personnel action." Therefore, by terminating the Mallens from their positions with the BPS for their refusal to approve faulty fire systems the BPS has directly caused the Mallens personal injury that has not arisen from "a bona fide personnel action." As a result, the Court should not allow the motion to dismiss the Mallens' claims for intentional and negligent infliction of emotional distress.

**IV. THE COURT SHOULD NOT DISMISS MR. STEVEN MALLEN'S CLAIMS FOR  
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST DEFENDANT  
POMELLA BECAUSE POMELLA WAS NOT ACTING WITHIN THE SCOPE OF HIS  
EMPLOYMENT WHEN HE ASSAULTED MR. MALLEN.**

It is true that "Traditionally, the statutory bar to a common law claim under the workers' compensation act is treated as a lack of subject matter jurisdiction." Fusaro v. Blakely, 40 Mass.App.Ct. 120, 123, 661 N.E.2d 1339 (1996); O' Dea v. J.A.L., Inc., 30 Mass.App.Ct. 449, 451 n. 4, 569 N.E.2d 841 (1991); Foley v. Polaroid Corp., 381 Mass. 545, 548, 413 N.E.2d 711 (1980). However, "a claim against a fellow worker for the commission of an intentional tort will be barred by the exclusivity clause of the MWCA, G.L. c. 152, § 24, if committed within the course of the worker's employment and in furtherance of the employer's interest." Id. (quoting O'Connell v. Chasdi, 400 Mass. 686, 690-691, [511 N.E.2d 349] (1987)).

The purpose of the MWCA is to ensure that employees who give up their common law rights to sue their employers will not be without recourse, but will have a mechanism to be reimbursed for their employment-related injuries "regardless of fault or foreseeability." Neff v. Commissioner of Dept. of Indus. Accs., 421 Mass. 70, 75, 653 N.E.2d 556 (1995). The MWCA provides employees who are injured on the job with the exclusive remedy against their employers who are thereby protected from civil suits. O'Connell v. Chasdi, 400 Mass. 686, 690-691, 511 N.E.2d 349 (1987); Catalano v. First Essex Sav. Bank, 37 Mass.App.Ct. 377, 381-382, 639 N.E.2d 1113 (1994); Fusaro v. Blakely, 40 Mass.App.Ct. 120, 123, 661 N.E.2d 1339 (1996); 2981;F5;F6;2981;F5;F6. In addition, the act provides the employee with the exclusive remedy against any co-employees who engage in tortious conduct "within the course of their employment and in furtherance of the employer's interest." Id.

However, Co-employees are absolutely not immunized from suit by the MWCA for tortious acts they commit outside the scope of their employment and which are unrelated to the interest of the employer. Brown v. Nutter, McClennen & Fish, 45 Mass. App. Ct. 212, 216, 696 N.E.2d 95 (1998) (citing Locke, Workmen's Compensation § 10.5, at 273 (Nason & Wall Supp.1995)). Thus, the court in Brown stated that the defendant co-employee was not immunized from the plaintiff's claim of intentional infliction of emotional distress if the defendant co-employee's alleged tortious conduct was not within the course of his employment or did not further his employer's interest. Id. Therefore, the court reasoned that "case law suggests the necessity of a fact-intensive analysis to answer" whether the co-employee's actions were within the scope of his employment or in furtherance of his employer's interest. Id. Similarly, in O'Connell, the court stated that the defendant engaged in a series of tortuous acts including unwanted sexual advances, assault, battery, and intentional infliction of emotional distress, which "were not remotely related to the employer's interests." O'Connell v. Chasdi, 400 Mass. 686, 511 N.E.2d 349 (1987).

Similar to the assault in O'Connell, Pomella was in no way acting "within the course of [his] employment and in furtherance of the employer's interest" when he assaulted and verbally threatened Steven Mallen with physical violence. Because Pomella's assault was not committed within the course of his employment M.G.L. c. 152, § 24 should not bar Steven Mallen's common law claims for intentional or negligent infliction of emotional distress.

**V. THE DOCTRINE OF SOVEREIGN IMMUNITY DOES NOT BAR THE MALLENS' CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS SINCE THE BPS'S CONDUCT DOES NOT PASS THE WHITNEY TEST AND THE BPS'S RIGHT TO SOVEREIGN IMMUNITY HAS BEEN WAIVED BY STATUTE.**

While the doctrine of sovereign immunity may insulate municipalities from liability for the acts of public employees in limited instances, the case at bar is not such an instance. Concerned with the unjust results achieved by blind application of sovereign immunity, the court in Whitney propounded a narrow test for determining when a government entity is entitled to such immunity:

“When the particular conduct which caused the injury is one characterized by the high degree of discretion and judgment involved in weighing alternatives and making choices with respect to public policy and planning, governmental entities should remain immune from liability.”

Whitney v. Worcester, 373 Mass. 208, 218, 366 N.E.2d 1210 (1977). Thus, “when the particular conduct claimed to be tortious involves rather the carrying out of previously established policies or plans, such acts should be governed by the established standards of tort liability applicable to private individuals or entities and the governmental entity in question held liable for the injuries resulting from such acts.” Id. Furthermore, this test should be applied “regardless of whether the individual tortfeasor would previously have been classified as a public officer, an employee of a public officer, or a municipal employee.” Id. When applying this test, the court propounded several factors that a court may consider when denying sovereign immunity to the government entity including whether the injury-producing conduct was “an integral part of governmental policymaking or planning.” Id. at 219. If these considerations are “not determinative,” then “governmental liability should be the general rule.” Id.

The BPS and Pomella's treatment of the Mallens in no way involves "the high degree of discretion and judgment involved in weighing alternatives and making choices with respect to public policy." *Id.* at 218. On the contrary, Pomella's assault and the BPS's decision to terminate the Mallens' employment was predicated on both parties attempt to coerce the Mallens' into contravening public policy as it pertains to fire safety within the Boston Public School System. Thus, the court should not dismiss the Mallens' claim for intentional infliction of emotional distress.

Even if M.G.L. c. 258, § 2 has abrogated the Whitney test for applying sovereign immunity to governmental bodies, the BPL's right to sovereign immunity has been waived by statute. As counsel for the defendant has correctly stated, the Bain court stated that sovereign immunity remains in effect "unless consent to suit has been 'expressed by the terms of a statute, or appears by necessary implication from them'" Bain v. City of Springfield, 424 Mass. 758, 763, 678 N.E.2d 155 (1997) (citing C&M Constr. Co. v. Commonwealth, 396 Mass. 390, 392, 486 N.E.2d 54 (1985)). When ruling that the Commonwealth's right to immunity had been waived by statute the court in Bain reasoned that "the statute on which the city's liability depends, waives the sovereign immunity of the [Commonwealth] by including [the Commonwealth] in the statutory definition of persons and employers subject to the statute," and by specifically providing for the award of actual and punitive damages." *Id.* The court in Bain further provided that "[t]he natural and ordinary reading of these provisions is that the Commonwealth and its subdivisions are liable for punitive damages on the same basis as other 'persons' and 'employers.'" *Id.*

Similar to Bain, the case at bar involves liability under a statute that defines “Employer” as “the commonwealth, and its agencies or political subdivisions, including, but not limited to, cities, towns, counties and regional school districts, or any authority, commission, board or instrumentality thereof.” M.G.L. c. 149, § 185(a)(2). In addition, the statute provides that “[a]ll remedies available in common law tort actions shall be available to prevailing plaintiffs.” M.G.L. c. 149, § 185(d). Thus, the “natural and ordinary reading of these provisions” is that the BPS as a “regional school district” of the Commonwealth is liable for personal injuries as well as punitive damages that result from its negligent and intentional conduct as well as the negligent and intentional conduct of its employees, including intentional infliction of emotional distress. As a result, the Court should not dismiss the Mallens’ claims for emotional distress.

**VI. THE MALLENS’ COMPLAINT SHOULD NOT BE DISMISSED BECAUSE NO AGREEMENT TO ARBITRATE IS CURRENTLY IN EFFECT AND THE UNION HAS STATED THAT IT DOES NOT REPRESENT THE MALLENS’ INTERESTS IN THE CURRENT ARBITRATION.**

The agreement to arbitrate and the employment contract in the current matter expired prior to the occurrence of the retaliatory termination.<sup>1</sup> The allegations leading to the Mallens’ termination, which gave rise to the controversy, occurred in or about October, 2004. The Mallens are no longer obligated to submit their claim to arbitration. Since the contract expired on August 31, 2003, the contract was no longer in effect at the time of the Mallens’ termination. See Local 888 Contract, attached as Exhibit 1). Mass. Gen. Laws c. 150E, § 11 provides that a

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<sup>1</sup> The Court should be made aware that both the Union and the Boston Public Schools Committee are currently in arbitration at the American Arbitration Association as to whether the now expired contract can be posthumously enforced by the Union. Further, the Boston Public School Committee during the negotiation of the now expired contract, expressly opted not to consider and agree to any survival (“evergreen”) provision that would have bound the parties to continue to perform pursuant to the terms of the agreement after its expiration and until such time as a new contract could be agreed to.

court shall vacate an arbitration award if “there was no arbitration agreement and the issue was not adversely determined in proceedings under section two and the party did not participate in the arbitration hearing without raising the objection.” M.G.L. c. 150E, § 11(a)(5). Though the Mallens are not petitioning the court to vacate an award, the language of the statute suggests that an arbitration panel does not possess jurisdiction to make an award where there is “no arbitration agreement.” Since the employment contract in the case at bar had expired and the Mallens have both verbally and in writing objected to arbitration, there was no arbitration agreement in effect and as a result the Mallens should not be made to resolve their dispute in arbitration rather than in court.

In addition, the union has repeatedly asserted that it is pursuing arbitration on behalf of its own interests rather than to protect the Mallens’ interests. (See November 18, 2004, Letter from Local 888 at ¶2, attached as Exhibit 2). Specifically, the BPS and the Union have unequivocally stated that the Mallens’ complaints in Federal Court are not related to the matters currently in arbitration. (See February 24, 2005 Letter from Local 888 at ¶2, attached as Exhibit 3). If the union has failed to represent the Mallens’ interests in arbitration, the Court would be denying the Mallens’ an opportunity to have their case heard by refusing the Mallens’ case. Therefore, the Court should not dismiss the case at bar since the Mallens do not have an obligation to arbitrate nor is the union currently representing the Mallens’ interests in the current arbitration with the BPS.

### **III. CONCLUSION**

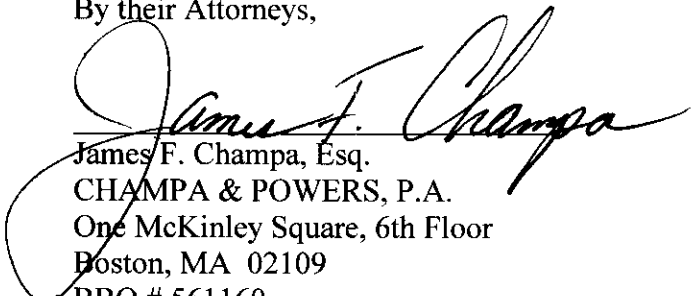
The Defendants have improperly presented numerous factual arguments contrary to the 12(b)(6) requirement of accepting the Plaintiffs' Pleadings as true. The court should disregard all factual arguments and rely solely on the Complaint in considering the Defendants' 12(b)(6) Motion to Dismiss.

### **REQUESTS FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request that, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Massachusetts Rules of Civil Procedure, this Honorable Court deny the Defendants' Motion to Dismiss in its entirety; and grant any other relief which this Honorable Court deems just and proper.

Respectfully Submitted,  
PLAINTIFFS, Steven H. and William J. Mallen,

By their Attorneys,



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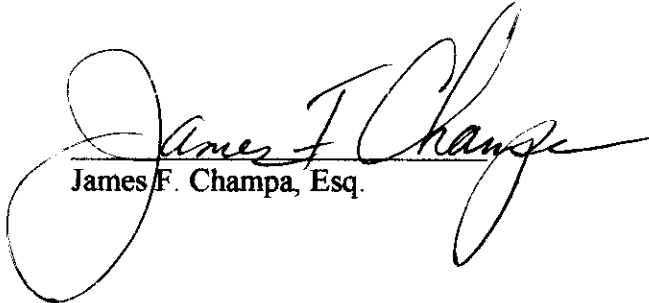
Dated: March 15, 2005



**CERTIFICATE OF SERVICE**

I, James F. Champa, of Champa, & Powers, P.A., do hereby certify that on March 15, 2005, I caused to be served the Plaintiff's Opposition to the Defendants' Motion to Dismiss upon Alissa Ocasio, counsel for the Defendants, by first class mail, postage prepaid.

Dated: March 15, 2005

  
James F. Champa, Esq.

# AGREEMENT

## BOSTON SCHOOL COMMITTEE

&

## LOCAL 285 SEIU, AFL-CIO PLANNING & ENGINEERING UNIT

SEPTEMBER 1, 2000 – AUGUST 31, 2000

**285** Local 285  
Service Employees International Union, AFL-CIO  
21 Fellows Street, Roxbury, MA 02119-2523  
617 442-4100 Toll-free: 1 800 882-1487 Fax 617 541-6839  
**U** Regional Office  
P.O. Box 60339, Florence, MA 01062  
413 586-7886 Fax 413 584-1159  
Way Street Address: 267 Locust Street, Northampton

[WWW.SEIU285.ORG](http://WWW.SEIU285.ORG)

## How to Participate

Here are ways to participate in your union:

### Worksite Stewards



are SEIU's primary representatives in the workplace. Stewards help other members by providing information and assistance on grievances, contract questions, and other issues.

### Member Organizers



are active Local members who help organize non-union workers into SEIU.



### Member Political Organizers

are members who are interested in and willing to organize co-workers around political activities that will improve life for working families. The Committee on Political Education (COPE) raises voluntary contributions from SEIU members to help identify and support legislators who are sensitive to our issues.



### Civil Rights Committee and Causes

Our Civil Rights Committee works to protect individuals from discrimination of any kind.

Local 285 also has active African-American, Latino, Haitian and Lavender caucuses.



### Chapter Officers

Each of the more than 100 chapters in Local 285 elects its own officers: Chapter Chair, Vice-Chair, Membership Chair, and other offices the chapter members choose. Running for the local's Executive Board is another way to get involved.

**You Are the Union**  
**Call now to get involved**



## Organizing and Political Action: Two Keys to Union Strength

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an employer down  
ys lower wages,  
your salary won't  
organizing others in  
who don't have the  
on jobs—and rais-  
dard of living—is an  
y we can improve

many SEIU mem-  
o organize other  
e can make a better  
amilies— better  
better pay, better  
d job security—if we  
er and organize for  
ur industries.

### Political Action

We must use our membership strength to build political strength, to hold lawmakers accountable for protecting our rights and supporting the issues important to working families.

SEIU encourages members to be politically active. We must work in our communities to make the issues that are important to working families widely known. We need to register to vote and go to the polls on election day. We must hold officials accountable—every day—for improving the lives of working families.

## Your Rights on the Job

Everyone wants smooth working relationships on the job. But problems arise in every workplace. As an SEIU member, you have the right to Union protection and representation—rights guaranteed by your contract.

### When Problems Arise— Talk to Your Steward

#### Contract Violations

If you think that management has violated your rights, or you have questions about work, talk with your Steward.

Your Steward is your on-the-job Union representative for answering questions and resolving problems.

You have the right to file a formal complaint seeking justice when one of your contractual rights has been violated by your boss.

The complaint is called a *"grievance"* and the system used to process it is referred to as the *"grievance procedure."* Read your contract to find out what the exact procedure and timelines are for your workplace.

Remember, grievance procedures have strict time limits. File promptly.

### When in Trouble— Demand Union Representation

You have the right to representation by your Steward during conversations with your boss which could potentially lead to discipline or termination—a protection enjoyed only by Union members. If you think the conversation is disciplinary in nature, follow these important steps—sometimes referred to as your ...

#### *"Weingarten Rights"*

- ***Demand Union representation.*** You must ask for Union steward representation before or during the interview.
- ***Do not make any statements or answer any questions without a steward present.*** You cannot be forced to make a statement.

The Weingarten Rights do not apply to everyday conversations between members and supervisors regarding regular job duties or work performance.

## Rights and Responsibilities in the Union

have opinions heard and respected, to be informed of  
y, to be educated in union values and union skills.  
choose the leaders of the union in a fair and democratic  
a full accounting of union dues and the proper stewardship  
resources.  
participate in the union's bargaining efforts and to approve  
acts.  
have members' concerns resolved in a fair and expeditious

### bilities

sibility to help build a strong and more effective labor  
to support the organizing of unorganized workers, to help  
ical voice for working people, and to stand up for one's co-  
d all workers.  
sibility to get informed about the internal governance of the  
o participate in the conduct of the union's affairs.  
sibility to contribute to the support of the union.  
sibility to treat all workers and members fairly.  
sibility to offer constructive criticism of the union.

## Your Union Family

Local 285 is an important part of the broader national labor movement.

Here's how we fit in:

**AFL-CIO**  
**American Federation of Labor-**  
**Congress of Industrial Organizations**

The AFL-CIO is the umbrella organization for the major unions in the United States. We also belong to the Massachusetts AFL-CIO, and local Central Labor Councils.

### SERVICE EMPLOYEES INTERNATIONAL UNION

Headquartered in Washington, DC, the 1.3 million-member Service Employees International Union represents workers throughout the United States, Canada and Puerto Rico.

SEIU is the third largest and fastest growing union in the AFL-CIO. The International office provides resources to Local Unions, as well as help and direction on major national campaigns.



#### International Officers

Andrew L. Stern, *International President*  
Betty Bednarczyk, *International Secretary-Treasurer*  
Anna Burger, *Executive Vice President*  
Patricia A. Ford, *Executive Vice President*  
Eliseo Medina, *Executive Vice President*  
Paul Policicchio, *Executive Vice President*

#### YOUR LOCAL UNION : LOCAL 285

SEIU is made up of more than 300 Local Unions. You belong to SEIU Local 285 which is headquartered in Boston and has a regional office in Northampton. Local 285 represents 12,000 workers in healthcare and the public sector, across Massachusetts.

Celia Wcislo, *President*  
Frank Borges, *Secretary-Treasurer*

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## AGREEMENT

This Agreement made and entered into by and between the School Committee of the City of Boston and the Service Employees International Union, Local 285, AFL-CIO/CLC (hereafter "the Union"), and representing the Professional Employees of the Planning and Engineering Department shall become effective September 1, 1996 and continue in effect until August 31, 1998.

## ARTICLE 1 - RECOGNITION

The School Committee of the City of Boston recognizes the Union as the exclusive bargaining agent for all the Professional Employees of the Department of Planning and Engineering of the School Department of the City of Boston; except Director of Facilities/Senior Structural Engineer, Assistant Director-Construction, Assistant Director-Design and Development, Senior Engineer, Mechanical Engineer, Project Director, Program Director, Program, Coordinator of Operations, Coordinator, Community, Contract Specialist.

<u>GRADE</u>	<u>TITLE</u>	<u>SALARY</u>
	Assistant Supervisor of S.B., Electrical	
	Installations and Maintenance.....	D
	Chief Electrical Engineer.....	G
	Chief Supervisor, S.B., Alterations and Repairs.....	G
	Chief Supervisor, S.B., Plumbing and Gasfitting.....	G
	Chief Supervisor, S.B., Heating and Ventilation.....	G
	Architectural Draftsmen (Junior).....	D
	Civil Engineer (Junior).....	E
	Senior Electrical Engineer.....	F
	Senior Supervisor, S.B., Alterations and Repairs.....	F
	Senior Supervisor, S.B. Electrical	
	Installations and Maintenance.....	F
	Senior Supervisor, S.B., Heating and Ventilation.....	F
	Senior Supervisor of Plumbing and Gasfitting.....	F
	Senior Supervisor, S.B., Roofs.....	F
	Supervisor, S.B., Alterations and Repairs.....	E
	Supervisor, S.B., Electrical	
	Installations and Maintenance.....	E
	Supervisor, S.B., Heating and Ventilation.....	E
	Supervisor, S.B., Roofs.....	E
	Supervisor, S.B., Plumbing and Gasfitting.....	E
	Principal Architectural Draftsman.....	F
	Civil Engineering.....	F

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or S.B. Roof.....G

1, 1999 the following positions are accreted into the salary grade indicated: (At the September 1,

#### SALARY

inator Facility Planner G  
 alist Energy Management G  
 alist Environmental G  
 ician (Energy or Environmental) F  
 Energy or Environmental) E  
 inator/Planner G

h no longer exists. If it is re-established, it of the bargaining unit.

nt employee shall remain under the Management l such time as the position is vacated. When the cated it shall revert back to the bargaining unit

employee holding the current position of rgy shall be upgraded to Senior Specialist Grade

ently held by Gerry Paull, Heather Lewchik and (currently managerial positions) will become t positions. These positions will be assigned ry grades.

#### ARTICLE 2 - MANAGEMENT RIGHTS

gnizes the right of the Committee to manage the direct employees covered by this Agreement in a their responsibilities, the right to hire, to spend or discharge employees for just cause, such rights shall not be exercised arbitrarily or t in conflict with the Agreement or current laws .

express provisions of this Agreement, the not be limited in any way by this Agreement in e of the regular and customary functions of l reserves and retains all powers, authority and ncluding and without limitation, the exclusive mmittee to issue reasonable rules governing the

City of Boston Agreement  
 through August 31, 2003

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conduct of the Department, provided that these rights are not exercised in conflict with existing laws and regulations in this Agreement.

#### ARTICLE 3 - SALARY RATES OF PAY

Section 1. Effective September 1, 1998 - increase the salary schedule by 3%.

##### SALARY SCHEDULE Effective 9/1/98

Salary Grade	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
01/A	522.08	549.78	575.85	603.21	621.31
02/B	566.64	593.86	620.98	648.13	667.57
03/C	620.99	648.13	682.02	710.89	732.22
04/D	682.02	710.89	744.81	780.48	803.90
05/E	744.81	780.48	817.74	856.75	882.47
06/F	817.74	856.75	900.87	946.73	975.15
07/G	932.54	971.55	1015.67	1061.54	1089.95

Effective September 1, 1999 - increase the salary schedule by 3%.

Salary Grade	Step 1	Step 2	Step 3	Step 4	Step 5
01/A	537.74	566.28	593.13	621.31	639.95
02/B	583.64	611.67	639.61	667.57	687.60
03/C	639.62	667.57	702.49	732.21	754.18
04/D	702.49	732.21	767.16	803.90	828.02
05/E	767.16	803.90	842.27	882.46	908.95
06/F	842.27	882.46	927.89	975.14	1004.41
07/G	960.52	1000.69	1046.14	1093.38	1122.64

Effective September 1, 2000 - increase the salary schedule by 3%.

Salary Grade	Step 1	Step 2	Step 3	Step 4	Step 5
01/A	553.87	583.26	610.92	639.94	659.14
02/B	601.15	630.02	658.79	687.60	708.23
03/C	658.81	687.60	723.56	754.18	776.81
04/D	723.56	754.18	790.17	828.01	852.86
05/E	790.17	828.01	867.54	908.93	936.22
06/F	867.54	908.93	955.73	1004.39	1034.54
07/G	989.33	1030.71	1077.53	1126.19	1156.32

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September 1, 2001 - increase the salary schedule by

Step 1	Step 2	Step 3	Step 4	Step 5
649	600.76	629.25	659.14	678.92
19	648.92	678.56	708.23	729.48
57	708.23	745.27	776.80	800.11
27	776.80	813.88	852.85	878.45
88	852.85	893.56	936.20	964.30
56	936.20	984.40	1034.52	1065.58
9.01	1061.64	1109.85	1159.97	1191.01

September 1, 2002 - increase the salary schedule by

Step 1	Step 2	Step 3	Step 4	Step 5
60	618.79	648.13	678.92	699.29
76	668.39	698.91	729.47	751.36
93	729.47	767.62	800.11	824.12
62	800.11	838.29	878.44	904.80
29	878.44	920.37	964.28	993.23
37	964.28	1013.94	1065.56	1097.54
58	1093.49	1143.15	1194.77	1226.74

	ANNUAL	WEEKLY
ARS	500.00	9.58
ARS	800.00	15.33
ARS	1,300.00	24.90
ARS	1,800.00	34.48
ARS	2,300.00	44.06
T	1,305.00	25.00

Employees shall advance one step on the Salary schedule every twelve (12) months continuous service in their grade until the maximum salary of their Grade is reached.

When persons shall be placed on the step of the salary schedule to which their prior years of service entitle them. If an employee has no prior service, the Director of Personnel Management has the option to place an employee on the first step based on his entire record of experience and the Senior Structural Engineer.

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Section 4. The longevity date for salary purposes for promoted employees will be the same as the Permanent Civil Service date of the promotion.

Section 5. All unit members upgraded/promoted will be placed on the 1st step of the salary schedule; if this results in the employee being paid less than his/her previous salary, the employee will be placed on the closest step above his/her previous salary.

#### ARTICLE 4 - SICK LEAVE

- A. All employees shall be granted an annual leave of fifteen (15) days without loss of pay for absences caused by illness, or by injury, or by exposure to contagious disease.

All new employees shall accumulate sick leave at the rate of 1 1/4 days a month.

- B. When sick leave is exhausted, vacation time may be used. All requests for an extension of sick leave shall be made to the Director of Facilities Management.
- C. No employee shall suffer any reduction in his/her credited sick leave reserve due to a change in classification.
- D. Effective 9/1/94, for the purpose of this Article as it applies to new employees in the bargaining unit, "Service" is defined as employment in any Department of the Boston public Schools.
- E. Sick Leave Plan Safeguards.

The School Committee order concerning sick leave presently in effect requires a registered practicing physician's certificate be furnished:

1. When the absence is six (6) days or more
  2. When an employee is absent both on a Friday and the following Monday and
  3. When an employee is absent either the day before or the day after a holiday or holiday period.
- F. 1. A bargaining unit member whose industrial accident claim has been accepted and who is receiving workers'

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compensation pursuant to G.L. c. 152 will have  
 covered all sick leave used after initial date of  
 injury related to said claim and prior to receipt of  
 workers' compensation pursuant to G.L. c. 152. Such  
 employee may, after acceptance of said claim, use such  
 sick or her sick leave accrued prior to acceptance  
 of claim as may result in the payment of full salary  
 including career awards applicable at the time of  
 injury.

Additionally, the period of time on workers'  
 compensation will be counted as years of service for  
 purposes of calculating longevity, seniority, and  
 vacation once the employee returns to work, but in no  
 event will an employee be entitled to accrue  
 additional benefits such as sick leave, personal days  
 vacation or accrue or receive benefits such as  
 additional career awards during the time that the  
 employee is receiving worker's compensation pursuant  
 to G.L. c. 152.

Notwithstanding the foregoing provision of Section 1,  
 a bargaining unit member who is absent due to physical  
 injury as a direct result of a physical assault  
 or battery which occurs during the course of his/her  
 employment and, as a result of this injury has been  
 accepted for and is receiving workers' compensation  
 pursuant to G.L. c. 152, shall have restored  
 sick leave used to supplement his/her workers'  
 compensation payments, and, which, when added to  
 his/her workers' compensation payment, is equal to his  
 full weekly salary. The provisions contained  
 in this section shall be limited to forty-five (45)  
 calendar days after a bargaining unit member has been  
 accepted and is receiving workers' compensation.

Employees receiving Workers' Compensation who have not yet  
 returned from their injuries will be considered for a  
 modified work plan at the employee's regular rate of pay  
 if medically determined that they are able to do so.  
 The self insurer, the self insurer's physician, the  
 employee's physician and/or physical  
 therapist, and the Union may be involved in the  
 development of an acceptable modified work plan. The  
 modified work plan shall return the employee to the  
 position that he/she held prior to the injury and not  
 to any duties outside the employee's original job  
 description. The modified work plan shall be in accordance

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with the laws governing Worker's Compensation in the State  
 of Massachusetts. Nothing herein is intended to waive any  
 individuals statutory rights under Massachusetts State or  
 Federal laws.

#### ARTICLE 5 - SICK LEAVE REDEMPTION

Any member of the bargaining unit who has ten (10) years or more  
 of service with the City of Boston who retires, resigns or dies  
 while in the employment of the Boston School system shall be  
 compensated for unused accumulated sick leave.

Such payment shall be made at the rate of forty (40) percent of  
 unused sick time, based upon the annual rate of pay of the  
 person at the time of death, retirement or resignation.

In the event of death of the member, payment shall be made to the  
 beneficiary.

#### ARTICLE 6 - LEAVES OF ABSENCE

	Days	Pay
Personal Leave for Personal needs not otherwise provided for.....	3	no loss
(One of the three (3) days may be used for emergencies The remaining two (2) days require a minimum notice of twenty four (24) hours to the Senior Structural Engineer. Failure to provide such minimum notice may result in denial of the requested personal day)		
Delegate to National Conventions of Veterans Org.....	3	no loss
Court Summons:		
Personal Business.....		no pay
School Business.....		no loss
Witness.....		no loss
Court attendance except in a case to which the employee is party.....		no loss
Jury Duty.....		no loss
Death: Immediate family, anyone residing in same household. Consecutive working days immediately preceding, following, or including the day of death. Holidays, vacations or	5	no loss

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ns shall be considered working  
provision.

uncle, aunt, cousin, in-laws, grand- ther, grandchild.....	1	no loss
(limited to three represent- ion).....	1	no loss
also a relative.....	1	no loss
those allowed one day without .....	1	no loss
late family, critical, not 5) working days in one year	5	no loss
- Rosh Hashanah and Yom Kippur	3	no loss

#### ARTICLE 7 - VACATION

employee who has been employed by the School  
of the City of Boston for less than five (5)  
accumulate vacation days at the rate of one and  
(1-1/4) days per month. Vacation days may not  
an employee until he has completed his first six  
of continuous employment. After six (6) months  
s employment, an employee may use his vacation  
such vacation days have been posted. After the  
onths and after the first year of continuous  
the employee's vacation time will be posted.  
vacation time will be posted on or about January  
year.

employee who has been in the employment of the  
ttee for five (5) years of full time employment  
titled to four (4) weeks vacation with pay. Any  
oyee who has been in the employment of the  
ttee for ten (10) year shall be entitled to  
ks of vacation with pay.

employee whose employment is terminated by  
hout just cause, or by resignation, retirement  
hout having taken the vacation to which he is  
, in the case of death, his estate, shall be  
of such vacation an amount equal to one (1)

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full day's pay at his regular rate for each such day of  
unused vacation.

- D. Choice of vacation during summer period will be governed by  
seniority provided that a vacation request list is  
submitted to Senior Structural Engineer by May 1. Any  
other weekly vacation requests shall be submitted to the  
Senior Structural Engineer at least one week prior to  
requested time.

#### ARTICLE 8 - GRIEVANCE PROCEDURE

It is the declared objective of the parties to encourage prompt  
resolution of grievances. The parties recognize the importance  
of prompt and equitable disposition of any complaint at the  
lowest organizational level possible. Employees subject to this  
Agreement shall not suffer a loss of pay for time spent in  
conferring and meeting on a grievance; provided however that  
employees involved have assigned duties, except as otherwise  
provided herein. Any person(s) or the Union shall have the  
right to present a grievance and have it promptly considered on  
its merits.

##### A. Definition

A "grievance" shall mean a complaint, (1) that there has  
been as to any employee, a violation, misinterpretation or  
inequitable application of any of the provisions of the  
Agreement, or (2) that an employee has been treated  
unfairly or inequitably by reason of an act or condition  
which is contrary to established policy governing or  
affecting employees, except that the term grievance shall  
not apply to any matters as to which the Committee is  
without authority to act. As used in the Article, the term  
"employee" shall mean also a group of employees within the  
bargaining unit having the same grievance.

##### B. Adjustment of Grievances

###### 1. General Procedures

- Step 1. An employee and/or his Union Representative shall  
present a grievance, in writing, to the Senior  
Structural Engineer or his designated representative  
within seven (7) days after the act or condition which  
is the basis of his complaint occurred. The employee  
and the Senior Structural Engineer or his designated  
representative shall confer on the grievance with a

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to arriving at a mutual satisfactory resolution of the complaint.

At a conference, an employee may be represented by a representative; but where the employee is represented, he must be present. A decision shall be communicated, in writing, to the aggrieved employee within ten (10) days after receiving his complaint. The Union will receive a copy.

If a grievance is not resolved at Step 1, the aggrieved employee or Union may appeal by forwarding the grievance in writing to the Assistant General Counsel for Labor Relations or his designee after he has received the Step 1 decision. The appeal shall be:

- 1. Name of grievant;
- 2. A statement of the grievance and the facts involved;
- 3. The corrective action requested;
- 4. Name of Union representative at Step 1, if any;
- 5. Signature(s) of grievant(s) or Union Representative.

The Assistant General Counsel for Labor Relations will schedule a conference with the aggrieved employee and Union representative, if any. The aggrieved employee shall be present at the conference, except where it is mutually agreed that the employee need not attend where it is mutually agreed that the facts are in dispute, and that the sole issue before the General Counsel is one of interpretation of a provision of this Agreement, or of established policy or practice. The General Counsel shall issue his decision on the grievance as soon as possible, but not later than seventeen (17) days after receipt of the appeal.

The failure of the School Committee representative to appear within the time limits set forth herein or to fail to file a mutually agreed extension of the time limits, shall constitute an automatic appeal of the grievance to the next level. The failure of the Union to file a grievance within the time limits shall constitute a waiver of the grievance.

ARTICLE 9 - ARBITRATION

h was not resolved at Step 2, under the  
 ure may be submitted by the Union to  
 e arbitration may be initiated by filing with  
 d the American Arbitration Association a request  
 The notice shall be filed within thirty (30)  
 of the grievance at Step 2 under the Grievance

por arbitration rules of the American  
 iation shall apply to the proceeding.

shall issue his written decision not later than  
 from the date of the close of the hearings or,  
 have been waived, then from the date of  
 final statements and proofs to the arbitrator.  
 he arbitrator will be accepted as final by the  
 spute, and both will abide by it.

ees that it will apply to all substantially  
 , the decision of the arbitrator sustaining a  
 e Union agrees that it will not bring or  
 t it will not represent any employee in any  
 s substantially similar to a grievance denied  
 f the arbitrator.

fee will be shared equally by the parties to

ARTICLE 10 - PROTECTION

ommittee shall provide to the members of the  
 upon their request or that of their counsel,  
 ormation within its possession related to the  
 fense of any lawsuit involving a member of the  
 ated to the performance of his duty.

ver a member is advised officially by a  
 f the Boston Police Department that it cannot  
 him from the danger of physical harm during  
 sorder, the member may leave the premises  
 f pay. The employee shall promptly report the  
 mmediate supervisor and receive instructions

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ARTICLE 11 - EMPLOYEE FILES

All employee's files shall be maintained under the following  
 conditions:

Section 1. No material derogatory to an employee's conduct,  
 service, character or personality shall be placed in his file,  
 unless the employee has had an opportunity to read the material.  
 The employee shall acknowledge that he has read such material by  
 affixing his signature on the actual copy to be filed; it is  
 understood that such signature merely signifies that he has read  
 the material to be filed and does not indicate agreement with  
 its contents.

Section 2. The employee shall have the right to answer any  
 material filed and his answer shall be reviewed by the Director  
 Facilities Management and placed in his file.

Section 3. Upon request by the employee, he shall be given  
 access to his file without unreasonable delay, by the Director  
 Facilities Management.

Section 4. Upon receipt of a written request, the employee  
 shall be furnished with a reproduction of any material in his  
 file.

ARTICLE 12 - UNION BUSINESS

Section 1. The Shop Steward or alternate shall be granted time  
 by the Director Facilities Management to attend Boston School  
 Committee meetings when matters pertaining to the Union are on  
 the agenda, without loss of pay.

Section 2. The Union shall provide the Boston School Committee  
 with a list of its officers and authorized Union representatives  
 and shall, as soon as possible, notify the Committee, in  
 writing, of any changes. No Union representative shall be  
 recognized by the Committee, except those designated in writing  
 by the Union.

Section 3. Space on bulletin boards shall be provided for  
 posting material containing subjects of interest to Union  
 members.

Section 4. Small group meetings of the Union may be held on  
 school property, Campbell Resource Center, at times when the

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on duty. Five days notice shall be given the  
l Engineer.

Structural Engineer of the School Committee  
Civil Service Notices of Examinations pertaining  
nt on bulletin board in the office space  
Facilities Management Department.

ion Representative using time under this  
first give notice to the Senior Structural  
designee. No more than one (1) Union  
r grievance committee member may be absent on  
n the same issue.

#### ARTICLE 13 - DUES DEDUCTION

reby accepts the provision of Section 170 of  
ne General Laws of Massachusetts and, in  
shall certify to the City Treasurer all payroll  
payment of dues to the Union duly authorized by  
l by this Agreement.

#### ARTICLE 14 - AGENCY FEE

shall be a condition of employment during the  
ement that every employee in the bargaining  
member of the Union shall pay an agency fee to  
ng with the Thirtieth (30th) day following his  
signing of this Agreement, whichever is later.  
ee shall be in an amount certified by the Union  
llective bargaining and contract

Union agrees to indemnify the Committee for  
financial loss which the Committee may be  
r suffer by an administrative agency or court  
ediction as a result of the Committee's  
ection 1 of this Article.

#### ARTICLE 15 - HOURS OF WORK

regular workweek for full-time employees shall  
s. The regular workday for these employees  
hours which shall include a one-half hour

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Section 2. Flextime. A regular work schedule will consist of  
five (5) work periods, Monday through Friday between the hours  
of 6:00 A.M. and 4:00 P.M. The Fire Alarm team shall have two  
shifts. The first shift will start between 6:00 AM and 9:00 AM.  
The second shift will start between 1:00 PM and 4:00 PM. Those  
working the second shift shall receive a twenty-five dollar  
(\$25.00) shift differential per week. A two-week notice will be  
required if a change in shift is desired by the employer. No  
more than one (1) individual in each division shall be assigned  
a starting time of 6:00 AM except the Fire Alarm team which may  
have two. The starting times will be bid under the provision of  
Article 24.

Fire alarm team matches to school zones. Except that starting  
time for fire alarm team be assigned to specific geographic  
zones, and there will be a minimum of three (3) fire alarm teams  
assigned to the day shift.

Section 3. On-Call. Employees designated to work the on-call  
shift shall receive one (1) hour of pay, minimum per day.  
Should the employee be called into work while on-call and  
respond, that employee will be paid according to the sliding  
scale rate for call backs. Call backs after 11:00 P.M. shall be  
a four (4) hour minimum. Call backs after 8:00 P.M. but before  
11:00 P.M. shall be a three (3) hour minimum. Call backs after  
4:00 P.M. but before 8:00 P.M. shall be a two (2) hour minimum.  
All hours are to be paid at time and one-half. This provision  
becomes effective July 1, 2000.

#### One Man Buildings

- A. All of Brighton
- B. All of Charlestown
- C. All of Dorchester
- D. All of South End
- E. All of South Boston
- F.
- G. All of West Roxbury
- H. All of Jamaica Plain

#### Two Man Buildings

- Except J. Mann
- Except Charlestown High
- Except Marshall, Lee, Holland
- Except Cleveland
- Except Blackstone, Quincy
- Except All of Roxbury
- Except West Roxbury High
- Except English High, Hennigan

#### ARTICLE 16 - OVERTIME

Employees shall be compensated at the rate of time and one half  
(1 1/2) for all hours worked over eight (8) in one day or forty  
(40) in one week.

The School Committee of the City of Boston Agreement  
Effective September 1, 2000 through August 31, 2003



ARTICLE 17 - HOLIDAYS

Following days shall be holidays:

ay	Independence Day
King Day	Labor Day
Birthday	Columbus Day
ay	Veteran's Day
y	Thanksgiving Day
	Christmas Day
Day	Good Friday

falls on an employee's regular day off (Saturday not celebrated by the School Department on a Monday or Friday) the employee is entitled to a

employee is not required to work on any of the in Section 1 of this Article which falls on his he shall nevertheless be paid his regular on for the workweek in which the holiday falls. of his regular service an employee is required the holidays listed in Section 1 of this be guaranteed four (4) hours over overtime plus d in excess of four (4) hours.

ARTICLE 18 - VACANCIES AND PROMOTIONS

a vacancy occurs in any Civil Service Title in it, the vacancy shall be first posted and then nce with current Civil Service Laws.

employee, when directed in writing, who is the duties of a higher grade, shall be e higher rate from the first day of assignment.

a vacancy occurs in a non Civil Service Title y unit, the vacancy shall be posted within the and applications/resumes will be evaluated and cted of the top three (3) qualified applicants. based on seniority, education and experience. ublicly advertise for candidates to insure a d candidates is available for interviewing and

ARTICLE 19 - TRAVEL REIMBURSEMENT

City of Boston Agreement  
through August 31, 2003

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Effective July 1, 2000, travel shall be compensated at the rate of \$14.00 per day.

Effective September 1, 2001, travel shall be compensated at the rate of \$15.00 per day.

Travel reimbursement shall be made only when the employee certifies that he has used his vehicle in the performance of his services for the School Department.

Reimbursement shall be processed on a monthly basis.

ARTICLE 20 - ACADEMIC ADVANCEMENT

The Department of Planning and Engineering recognizes and wishes to encourage further academic education in the employee's pursuit of greater knowledge in his designated field. With this in mind, it is agreed that courses taken in an accredited technical school which result in either a degree or a certificate or proficiency in the designated course will be considered as an educational equivalent length of service. For example, any course which requires a full academic year will be considered as one year of longevity in the salary grade in which the employee is presently situated. Such longevity shall take effect only upon receipt of the degree or the certificate of proficiency. In no event shall an employee go beyond the maximum step of his present grade. The names of the technical institutes and the courses offered must be submitted to the Senior Structural Engineer. This advance in the salary grade shall take effect the first Wednesday of the month after the Senior Structural Engineer accepts the certificate or degree. Any employee that is on the payroll as of \_\_\_\_\_ (the date of the signing of the agreement) shall be permitted to submit any course completed since September 1, 1967, for the requested approval of the Senior Structural Engineer. Any employee that is not on the payroll as of \_\_\_\_\_ (the date of the signing of the agreement) may only submit courses that have been taken while he/she is an employee of Planning and Engineering.

ARTICLE 21 - INSURANCE

The City of Boston also provides seventy-five percent (75%) of the cost of a fine Health Insurance plan, Blue Cross-Blue Shield. A two thousand dollar (\$2,000) free life insurance

The School Committee of the City of Boston Agreement  
Effective September 1, 2000 through August 31, 2003

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provided with a provision for employees covered  
t to purchase more life insurance at a low rate.

#### ARTICLE 22 - HANDLING OF NEW ISSUES

Matters of collective bargaining import not covered by this Agreement may, during the life of this Agreement be handled in the following manner:

By the Committee: Except as any change may be commanded by law, the Committee will continue its policies as outlined herein. With respect to matters not covered by this Agreement which are proper subjects for collective bargaining, the Committee agrees it will make no changes without prior consultation and negotiation with the Union.

By the Union: In any matter not covered in this Agreement which is a proper subject for collective bargaining, the Union may raise such issue with the Committee for consultation and negotiation; except that the Union shall not renew or seek to renew any question introduced, debated and settled, either negatively or affirmatively, during the bargaining prior to final settlement. This restriction shall not apply to the areas outlined in the Preamble as subjects for continuing consultation. Being a mutual Agreement, this instrument may be amended at any time by mutual consent.

#### ARTICLE 23 - CAREER AWARDS

- A. Effective September 1, 2000, all persons covered by this Agreement who have completed at least nine (9) years of Civil Service in the City of Boston shall receive each year in addition to any other salary entitlement an incentive award as indicated below which amount shall be added to and paid as part of the person's regular salary:

Nine (9) years of service.....	\$550
Fourteen (14) years of service.....	850
Nineteen (19) years of service.....	1350
Twenty-nine (29) years of service.....	1850
Thirty-nine (39) years of service.....	2350

- B. Effective September 1, 2000, all persons covered by this agreement who have completed at least nine (9) years of Civil Service in the City of Boston shall receive each year in addition to any other salary entitlement an incentive award as indicated below which amount shall be added to and paid as part of the person's regular salary:



years of service.....\$650  
 (14) years of service..... 950  
 (19) years of service.....1450  
 (29) years of service.....1950  
 (39) years of service.....2450

#### ARTICLE 24 - SENIORITY

ent Planning and Engineering personnel shall  
 assignment on a seniority basis. Seniority  
 s in current Civil Service Law.

er to continue the Department's practice of  
 yees to become knowledgeable of their  
 n all Boston School Buildings, the Union  
 nior Structural Engineer may assign  
 ees, after all permanent employees have  
 ing process, to the districts as he deems in  
 of the Department.  
 s defined as a group of school buildings put  
 istrative purposes. The Union agrees that the  
 Engineer may, from time to time, amend the  
 names of school buildings in a zone.

districts have been set by seniority, any  
 n the Department caused by death, retirement,  
 ll be filled by the senior man in the

#### ARTICLE 25 - SAVING CLAUSE

ion of this Agreement is, or shall at any time  
 to law, then such provision shall not be  
 performed or enforced, except to the extent  
 law and substitute action shall be subject to  
 consultation and negotiation with the Union.

that any provision of this Agreement is or  
 time be contrary to law, all other provisions  
 ent shall continue in effect.

#### RESOLUTION OF DIFFERENCES BY PEACEFUL MEANS

Committee agree that differences between the  
 ttled by peaceful means as provided within  
 e Union, in consideration of the value of

*Boston Agreement*  
*August 31, 2003*

this Agreement and its terms and conditions, and the Legislation  
 which engendered it, will not engage in, instigate, or condone  
 any strike, work stoppage, or any concerted refusal to perform  
 normal work duties on the part of any employee covered by this  
 Agreement.

#### ARTICLE 27 - PERFORMANCE EVALUATION

Section 1. All employees will be evaluated annually on a  
 diagnostic-prescriptive evaluation procedure which shall be  
 reasonably related to the employee's job description. The  
 evaluation year will be from September 1 to August 31 for each  
 employee.

Section 2. Employees will be evaluated by their immediate  
 supervisor, consistent with School Committee policy on the  
 employment/supervision of relatives. Where the evaluator is  
 related to the employee to be evaluated, the evaluation will be  
 performed by the next level of management.

Section 3. No later than thirty (30) days after the start of  
 the rating year, the evaluator shall meet with the employee for  
 the purpose of explaining the diagnostic-prescriptive evaluation  
 program, answering questions and determining additional job-  
 related responsibilities which will be covered in the  
 evaluation.

Within five (5) days after the meeting, the employee will  
 receive a copy of a list of job-related functions for which  
 he/she is responsible and on which his/her performance will be  
 evaluated.

Section 4. Within ten (10) days following the completion of the  
 evaluation, the evaluator will meet with the employee for the  
 purpose of discussing the evaluation. At this meeting, the  
 employee will be shown his/her written evaluation and will sign  
 it to indicate having seen it, but not to indicate agreement or  
 disagreement. A copy of the evaluation shall be provided to the  
 employee.

Section 5. To allow supervisors to appropriately and  
 effectively evaluated the performance of the employees they  
 supervise, the following rating system shall be used:

- (U) The employee fails to meet the standard, and his/her  
 performance, as measured against this standard, is  
 unsatisfactory.

*The School Committee of the City of Boston Agreement*  
*Effective September 1, 2000 through August 31, 2003*

fails to meet the expectations of the School and needs improvement in his/her performance.

ence of the employee meets the standard and of the School Department.

meets and/or generally exceeds the standards performance, as measured against this standard,

ence of the employee exceeds the standards and ons of the School Department.

ossible ratings. Any rating of "Unsatisfactory" ment" must be accompanied by the description of description for improvement on an attached

accompany a rating of "Exceeds Expectations." ng of "Meets Expectations or "good" are

creases shall be contingent upon an employee ll evaluation rating of "Meets Expectations"

the evaluations do not constitute disciplinary ntinued failure to meet performance standards tional evaluations, warnings, and further n.

atisfactory evaluation shall be subject to the tration procedure.

tions will be maintained in the Office of nt with state and federal laws concerning d privacy.

#### ARTICLE 28 - MISCELLANEOUS

cy in the City of Boston.

he residency requirement of the City of Boston to the School Committee, employees first after December 1, 1992, must be residents of oston.

#### Section 2. Comprehensive Assistance Program for Employees (C.A.P.E.)

- A. The Union and the School committee agree to cooperate full in the implementation and operation of all phases of the C.A.P.E. proposal approved by the School committee of the City of Boston on April 24, 1984.

#### Section 3. S.E.I.U., Local 285, Health and Welfare Fund.

The School Committee agrees to provide for payroll deductions of employee contributions to the S.E.I.U., Local 285 Health and Welfare Fund for those employees who so authorized deductions in an amount specified by the Local.

#### ARTICLE 29 - AFFIRMATIVE ACTION/NON-DISCRIMINATION

As sole collective bargaining agent, the Union will accept into voluntary membership and will represent equally all eligible persons in the unit without regard to race, color, creed, religion, national origin, sex, marital status, sexual preference, age, or physical handicap.

The Committee agrees to continue its policy of not discriminating against any person on the basis of race, creed, color, religion, national origin, sex, marital status, sexual preference, age, physical handicap or participation in or association with the activities of any employee association.

The Committee and the Union will both recognize the work cooperatively to implement affirmative action in the Boston Public Schools.

#### ARTICLE 30 - LABOR/MANAGEMENT RELATIONS COMMITTEE

Section A. A Labor/Management Committee shall be established consisting of three (3) representatives from the Union (to be chosen by the Union) and three (3) from the employer (to be chosen by the employer). Time spent by employees meeting shall be considered to be time worked and shall be paid by the employer.

Section B. The Labor/Management Committee shall meet upon the request of either party and at least monthly to discuss labor/management issues.

ARTICLE 31 - PUBLIC HEALTH AND SAFETY

public health emergency arises in the Boston  
the Director of Facilities Management may assign  
assist in the testing, abatement and resolution of  
uch assignments will not include any hazardous

ARTICLE 32 - ASBESTOS SCREENING

tee agrees to provide annually to employees,  
fteen (15) years of service, lung screening at a  
y selected by the Committee and the Union at no  
oyees.

ARTICLE 33 - TECHNOLOGICAL CHANGE

Union and the School Committee recognize that  
ustments precipitated by the introduction of new  
e School Committee's workforce. To ease that  
Union and the School Committee agree to work  
the introduction and implementation process.  
sires to provide a healthy and safe working

tee will provide the Union and the employees  
ication of technological change and will involve  
e affected employees in the planning process.

School Committee agrees to meet with the Union  
labor/management issues regarding these proposed  
ssues include:

d introduction of the new equipment;

ction of new job classifications and any changes  
job classifications or descriptions;

quirements and availability;

Safety considerations, including ergonomic

onitoring and/or machine pacing.

6. Whether wages, benefits or fringes will be altered by the introduction of new technology to current job classification(s).

Pregnant employees who work on VDT systems may request temporary reassignment so that they are not required to work on the VDT, and be reassigned within two weeks of notification to the immediate supervisor of the pregnancy and for the duration of the pregnancy. This request must be made in writing to the immediate supervisor.

All employees working on a VDT shall be required to take a break away from his/her screen of at least fifteen (15) minutes after two (2) hours of work on the terminal. In the event the normal work schedule does not provide a lunch or rest break every two (2) hours, the employee shall be assigned duties away from the VDT screen for at least fifteen (15) minutes after two (2) hours of work.

Section 3. Equipment. The School Committee shall make every effort to ensure that VDT equipment be properly maintained, including testing for brightness, flicker, clarity of image, contrast and adjustability, according to standards specified in the manufacturer's maintenance manual and/or maintenance agreement; that the VDTs be located away from windows and that windows in the rooms where VDTs are used will have blinds or drapes; that in the event screen color or adjustable lighting are unable to reduce glare then a non-glare screen shall be fitted on the VDT on an interim basis until another solution is found; that each VDT have a separate control for brightness and contrast which is easily adjustable by the employee; that the screen be free of flicker or blur; that the screen be free of flicker or blur; that all appropriate and necessary shielding be installed to protect employees from possible radiation hazards; and that no employee be assigned to work directly behind a VDT.

Section 4. Training. Training, which shall include instructions in the specific operations, special precaution and safety features, shall be provided during the introduction and implementation of new technology in the work place. No employee shall be required to work on equipment that he/she has not been trained to operate. Training shall be conducted by appropriate personnel.

ARTICLE 34 - DURATION

subject to the appropriation of sufficient  
at the cost items under M.G.L. Chapter 150E.

shall be effective from September 1, 2000 through  
provided that it is ratified by both parties  
Council of the City of Boston votes a  
appropriation to the budget of the Boston School  
cient-- to fund the Agreement for the first

COMMITTEE  
STON

for LOCAL 285, SEIU, AFL-CIO

By Cecilia A. Woods

Title President

Date 7.31.00

William M. Mellon Steward  
Franky Burgess, Secretary Treasurer

SIDE LETTER OF AGREEMENT ON UPGRADESSection 1.

Vincent Amato

Mr. Amato shall be upgraded, step to step based upon current seniority, to the title of Senior Supervisor of Electrical, Grade F, effective September 1, 1989, retro paid in lump sum July 1, 1991.

Section 2.

Jack Madden

Mr. Madden shall be upgraded, step to step based upon current seniority, to the title of Chief Supervisor of Roofing, Grade G, effective September 1, 1989, retro paid in lump sum July 1, 1991.

Section 3.

Greg Westgate

Mr. Westgate shall be upgraded, step to step based upon current seniority, to the title of Civil Engineer, Grade F, effective upon execution of agreement.

Section 4.

Robert Banks

Mr. Banks shall be upgraded, step to step based upon current seniority, to the title of Architectural Draftsman to Grade E six months after ratification of the contract agreement and upon successfully passing a review of the Director of Facilities Management that he performs the following functions:

- A. Mr. Banks will be trained and have the ability to use the CAD-CAM;
- B. He shall be responsible for issuance and maintenance of School Department prints, schematics and continuous updating of drawings;
- C. He will assist in emergency dispatching;
- D. He will have proficiency in the work order system (FM01);
- E. He will perform the duties of Junior Architectural Draftsman; and

He shall perform these duties out of the Campbell Resource Center Field Office unless otherwise notified.

n of the Director of Facilities Management shall  
ll not be arbitrary or capricious.

.U. AFL-CIO

Boston School Committee

#### SIDE LETTER OF AGREEMENT

Section 1. The current Jr. Civil Engineer will be upgraded, to Civil Engineer, effective September 1, 1994, step to step.

Section 2. Effective September 1, 1994, upgrade the current most senior Supervisor of School Buildings Electrical Installation and Maintenance to Senior Supervisor, S.B., Electrical Installation and Maintenance step to step.

Section 3. Each division may have up to two Senior Supervisors. (Exception: Any division which has a night shift may have up to four Senior Supervisors).

Section 4. A Supervisor, S.B., Electrical Installation and Maintenance will be upgraded to Senior Supervisor, S.B., Electrical Installation and Maintenance upon meeting the following requirements: Masters or Journeyman Electrician's License and three years experience in the Department of Planning & Engineering and a pre-approved Certificate of Professional Achievement or an Associates Degree in a related field.

A Supervisor, S.B., Heating and Ventilation will be upgraded to Senior Supervisor, S.B., Heating and Ventilation upon meeting the following requirements: 3rd Class Engineer's License and three years experience in the Department of Planning & Engineering and a pre-approved Certificate of Professional Achievement or an Associates Degree in a related field.

A Supervisor, S.B., Alterations and Repairs will be upgraded to Senior Supervisor, S.B., Alterations and Repair upon meeting the following requirements: three years experience in the Department of Planning & Engineering, a non-restricted Massachusetts State Construction Supervisor license and a pre-approved Certificate of Professional Achievement or an Associates Degree in a related field.

A Supervisor, S.B., Plumbing and Gasfitting will be upgraded to Senior Supervisor, S.B., Plumbing and Gasfitting, upon meeting the following requirements: three years experience in the Planning & Engineering and a Master or Journeyman Plumbers License and a pre-approved Certificate of Professional Achievement or an Associates Degree in a related field.

#### Section 5. Reorganization of the Electrical Fire Alarm Division.

The School Department and the Union bargained to resolution over the impact upon the unit members of the reorganization of the

Alarm Division. Additionally, the parties agree  
1995, the following shall occur.

of Senior Supervisor Electrical Fire Alarm will  
into a position of Chief Supervisor Electrical

of Senior Supervisor S.B. Electrical I&M will be  
into a position of Supervisor S.B. Electrical

ition of Supervisor Electrical Fire Alarm and a  
Assistant Supervisor Electrical Fire Alarm; and

responsibilities for the night shift team in  
al I&M Division.

al 285 For THE BOSTON SCHOOL COMMITTEE

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

# APPENDIX A

## FACILITIES MANAGEMENT DEPARTMENT Planning and Engineering Annual Performance Evaluation

Name of Employee \_\_\_\_\_

Position Title \_\_\_\_\_ Date: \_\_\_\_\_

\*\*\*\*\*  
\*  
E - EXCEEDS THE STANDARD G - MEETS AND/OR M - MEETS STANDARDS N - FAILS TO MEET U - FAILS TO MEET  
AND EXPECTATIONS GENERALLY EXCEEDS AND EXPECTATIONS EXPECTATIONS/ PERFORMANCE  
EXPECTATIONS IMPROVEMENT

### \*QUANTITY

1. Completes all necessary paperwork in a timely manner. E \_ G \_ M \_ N \_ U \_
2. Visits assigned buildings on a regular basis.  
E \_ G \_ M \_ N \_ U \_

### QUALITY

3. Prepares and completes work orders in a clear,  
concise language using all proper terminology.  
E \_ G \_ M \_ N \_ U \_
4. Directs contractors, inspects work and processes  
invoices in a timely and professional manner.  
E \_ G \_ M \_ N \_ U \_
5. Prepares and completes assigned contract drawings and  
specifications in time allotted.  
E \_ G \_ M \_ N \_ U \_
6. Completes all work related tasks in a reasonable  
time frame. E \_ G \_ M \_ N \_ U \_
7. Uses initiative to solve any problems which  
may arise.  
E \_ G \_ M \_ N \_ U \_

### ATTITUDE

8. Responds to page in a reasonable amount of time. E \_ G \_ M \_ N \_ U \_
9. Maintains professional working relationships with  
other members of the department. E \_ G \_ M \_ N \_ U \_
10. Maintains a professional relationship with other  
with other school personnel. E \_ G \_ M \_ N \_ U \_

work in absence of supervision. E \_ G \_ M \_ N \_ U \_  
 with reasonable written and oral E \_ G \_ M \_ N \_ U \_  
 regular attendance. E \_ G \_ M \_ N \_ U \_  
 contracted hours of work. E \_ G \_ M \_ N \_ U \_  
 DEVELOPMENT  
 - understanding needs of customers. E \_ G \_ M \_ N \_ U \_  
 ability for improvement. E \_ G \_ M \_ N \_ U \_  
 ment in decision making and E \_ G \_ M \_ N \_ U \_  
 ing. E \_ G \_ M \_ N \_ U \_  
 priority setting. E \_ G \_ M \_ N \_ U \_  
 priority setting. E \_ G \_ M \_ N \_ U \_  
 personal professional activities. E \_ G \_ M \_ N \_ U \_  
 (SECTION CHIEFS ONLY)

LS  
 ly and meaningful reports for employees  
 vision. E \_ G \_ M \_ N \_ U \_  
 directs employees in his/her division  
 based on observed needs and performance. E \_ G \_ M \_ N \_ U \_  
 ordinates.  
 N \_ U \_  
 disputes at lowest level.  
 N \_ U \_  
 lary example.  
 N \_ U \_

Mechanical Engineer or Senior Engineer	Date
Chief	Date
Employee	Date

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November 18, 2004

William Mallen  
11 Midland Street  
Dorchester, MA 02125

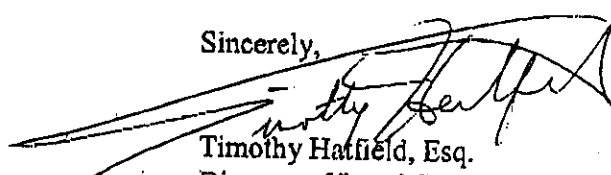
Dear Mr. Mallen;

I am in receipt of your letter dated November 9, 2004 addressed to Deb Sullivan. Please be advised that SEIU Local 888 will not be consulting with your personal attorney on "all material steps" concerning the current Arbitration regarding your termination as you have requested, nor will we be copying correspondences to your attorney. Please feel free to send your attorney any information you wish, but to be clear, it is your obligation to do so not the Local's.

Your letter is unclear about your future intentions. The Union has not withdrawn the grievance protesting your termination. The only question for you is whether you want to have the matter arbitrated. Although whether the Union arbitrates this dispute is ultimately up to the Union, we certainly are interested in your desire. If your intent is to pursue individual claims against the School Committee, that is naturally your decision, and the Union has no involvement in that matter. However, the Union's decision will be guided by what is in the best interests of the Union. If the arbitration is not pursued, that affects the Union and the Committee; you should consult with your own attorney about its effect on any other case that you are considering filing against the School Committee.

There is no definite date for the arbitration, although the arbitrator has offered February 14, 2005. To make sure that the Union understands your intentions, I would like a yes or no answer to whether you would like to proceed with the arbitration postmarked no later than November 26, 2004. If your answer is yes and the Union decides to continue with the arbitration, then we will schedule a preparation meeting 3-4 weeks prior to the new date for the arbitration. If it is no, then we will withdraw the arbitration and consider the matter closed.

Sincerely,



Timothy Hatfield, Esq.  
Director of Legal Services



SERVICE EMPLOYEES  
INTERNATIONAL UNION  
AFL-CIO, CLC

529 Main Street  
Suite 772  
Charlestown, MA 02129  
Telephone: 617.241.3300  
Fax: 617.241.5150

cc: Deb Sullivan

70031010000464958053



SERVICE EMPLOYEES  
INTERNATIONAL UNION  
AFI-CIO, CLC

February 24, 2005

William Mallen  
11 Midland Street  
Dorchester, MA 02125

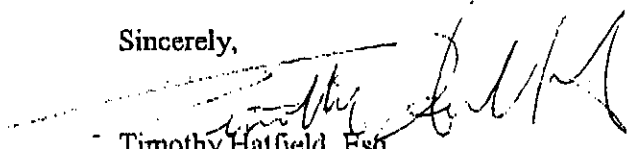
Dear Mr. Mallen:

In accordance with the request that your attorney sent us on your behalf, the Union has been successful in obtaining a postponement of the arbitration of your termination over the strong objection of the School Committee. The new date is May 25 at 9:30 a.m. at the American Arbitration Association in Boston.

The School Committee aggressively argued that your federal lawsuit should not affect this matter, which, as you know, involves a Union-filed grievance over your termination under the contract. It further pointed out that this is the third postponement sought by the Union. The arbitrator granted the Union's request subject to the conditions that there will be no further postponements and that the School Committee may argue that, in the event the Union prevails and the arbitrator orders any backpay remedy, the School Committee can request that its backpay obligation be tolled for the period of the delay. I am attaching a copy of correspondence from the AAA, including the new notice of hearing.

The Union is fully prepared to present your case on the new date and will notify you of the date for a preparation meeting, which will take place in April. Please notify me in writing whether you wish to proceed with the arbitration on or before March 15, 2005. If I do not hear from you prior to that date, I will assume that you have no further interest in this matter and the arbitration will be withdrawn.

Sincerely,



Timothy Hatfield, Esq.  
Director of Legal Services

529 Main Street  
Suite 222  
Charlestown, MA 02129  
Telephone: 857.588.0400  
Fax: 617.241.5150

cc: Deb Sullivan  
David Rome, Esq.